IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 165 OF 2003

S T A T E ... Applicant.

versus

Umesh Chodankar,
s/o Gopinath Chodankar,
r/o Haldan Wada,
Mayem. ... Respondent.

Mr. S. N. Sardessai, Public Prosecutor for the State/ Applicant.

Mr. S. N. Joshi, Advocate for the Respondent.

CORAM: P. V. HARDAS, J.

DATED: 7TH AUGUST, 2003.

ORAL JUDGMENT

The State being aggrieved by the acquittal of the Respondent/Accused for an offence punishable under Sections 324, 323 and 504 of the Indian Penal Code passed by the Judicial Magistrate First Class, Bicholim, Goa, by Judgment dated 28th January, 2003, in Criminal Case No.36/S/01/C, has filed the present application.

2. The allegations against the Respondent/Accused was that on 12th May, 2001, at 12.45 p.m. at Haldanwadi, Mayem, the Accused assaulted the Complainant Damodar Chodankar with koita and assaulted Yeshwant and Kumari Bhamini with slaps and abused them with filthy words. Accordingly, charge for the offence punishable under Sections 324, 323 and 504 of the Indian Penal Code was framed against the Respondent/Accused. The Accused denied his guilt and claimed to be tried. His defence was that his brother-in-law Damodar, had demanded an amount of Rs.20,000/- from the sister of the Accused which she had refused. His further defence was that the Complainant had opposed his marriage and was forcing him to divorce his wife. Thus, the defence is that the relations between the prosecution witness and the Accused were strained and due to the enemical relations a false case was filed against him. The prosecution in support of its case examined seven witnesses.

3. Complainant, P.W.2, has stated that he and the brother-in-law of the Accused had gone to the house of Vishnu Bhovar to enquire from the Accused as to why he was trying to break the marriage proposal of his sister Bhamini. On that, the Accused is alleged to have filthily abused the Complainant and

while the Complainant was about to enter the house of Vishnu, the Accused hit the Complainant on his head with a koita. The learned Judge found that as per the evidence of P.W.6, she used to keep the koita in her kitchen. Complainant has not stated from where the Accused had brought the koita nor has he stated the exact place where the Accused was sitting in the house of Vishnu Bhovar. P.W.2, has further stated that on the cries of the wife of Vishnu Bhovar, Damodar, Bhamini and Yeshwant came to the scene and were also assaulted by the Respondent/Accused. The learned Trial Judge found that the injuries suffered by Bhamini due to the pulling of her hair was not supported by Bhamini. P.W.2, has admitted in the cross-examination that there was enemity between him and the Accused and the Accused had been thrown out from the house and made to live separately. The learned Trial Court found major contradictions in the evidence of P.W.2 in respect of the assault on him as well as the assault on his brother-in-law Sudesh. The learned Trial Court found inter se contradictions in the evidence of P.W.3 and P.W.4. The learned Trial Court also found that P.W.5, Dr. Baptist Mascarenhas, had stated that the Complainant had received injuries by a chopper. According to the prosecution, the Accused had inflicted the injuries by means of a koita and it was difficult to reconcile

the injuries caused by a chopper and the injuries caused by a koita. The learned Trial Court also found that there were complaints filed by Chitra Chodankar supporting the case of enemical relations.

4. In the background of the enemical relations, the learned Trial Court found that in the absence of any independent witnesses, it was highly unsafe to base the conviction on the evidence of the interested witnesses whose evidence suffered from inter se contradiction on material aspects. The learned Trial Court thus gave the benefit of doubt to the Respondent/Accused and acquitted him.

5. I have heard the learned Counsel for the parties and with their assistence, I have perused the evidence which has been made available to me. The learned Trial Court has found that the prosecution had examined only interested witnesses and admittedly, the relations between the Accused and the prosecution witnesses were strained. The inter se contradictions in the evidence of the prosecution witnesses rendered their version highly suspect and in the absence of corroboration from independent witnesses, it was unsafe to convict the Respondent/Accused.

6. The view taken by the learned Trial Court appears to be a possible view on the basis of the evidence on record. There is no perversity in the reasoning to warrant any interference in an Appeal against acquittal.

7. In view of this, Criminal Miscellaneous Application No. 165 of 2003 is dismissed. Leave refused.

P. V. HARDAS, J.

RD.